

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**January 13, 2005**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 13, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; Bill Johnson; Bud Hentzen; Ronald Marnell; Bob Hernandez; Elizabeth Bishop; Denise Sherman and Gary K. Gibbs. Frank Garofalo, M.S. Mitchell and John W. McKay Jr., were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; and Rose Simmering, Recording Secretary.

#### **❖ PLANNING COMMISSION ITEMS**

1. Approval of December 9, 2004 meeting minutes.

**MOTION:** To approve the December 9, 2004 meeting minutes.

**WARNER** moved, **BISHOP** seconded the motion, and it carried (10-0).

2. **Case No.: DR2004-10** - Request Authorize the advertisement of an amendment to the Subdivision Regulations regarding public utility easements associated with lot splits, plats and vacations

The following revisions have been recommended by the Subdivision Committee on January 6, 2005, to clarify the need for additional easements associated with lot splits or vacation cases:

#### **Section 7-205(A) Public Easements:**

Section 7-205 (A) Public Utility Easements. Public utility easements shall be provided where necessary. Easements for proposed utilities shall be centered on rear or side lot lines and shall be at least 20-feet wide along rear lot lines and 10-feet wide along side lot lines. Where necessary to protect existing tree rows from damage, such easements may be widened appropriately not to exceed 30 feet. Except when specifically required by the Planning Commission, where a lot split or vacation case is already served by existing utilities in easements that are less than the minimum widths required for proposed utilities, additional easement widths may be required only if consent to dedicate such additional easement is obtained from all adjacent properties in the entire block. Utility easements for street lighting purposes shall not be required to exceed 10 feet in width. If a utility easement is to also be used for drainage purposes, the easement shall be designated on the plat as both a utility and drainage easement, and additional width may be required. For plats or lot splits in areas with existing water and sewer mains, a public sewer easement or public sewer or water line easement may be required to protect a private sewer or water line across one ownership to serve another ownership with the approval of the System Planning Division of the City of Wichita Water and Sewer Department.

SCHLEGEL Commissioner Mitchell is not here today but has requested that the Planning Commission hold this item for two more weeks so he can be present.

**MOTION:** To approve defer Item 2 for two weeks.

**JOHNSON** moved, **GIBBS** seconded the motion.

BISHOP I am not going to support the motion, this has been deferred any number of times and I think it is time that we took care of it.

**MOTION CARRIED 9-1. (BISHOP opposed).**

#### **❖ SUBDIVISION ITEMS**

3. Consideration of Subdivision Committee recommendations

- 3-1. **SUB2003-149 – Revised Final Portion of Overall Preliminary Plat – AVALON PARK THIRD ADDITION, located on the east side of Tyler Road and north of 37<sup>th</sup> Street North.**

**NOTE:** This final plat is a portion of the overall preliminary plat of the Avalon Park Addition, which was approved for this site on January 16, 2003. This final plat consists of the northern portion of the overall preliminary plat approved for the site and represents the second phase of development. The site is located within the 100-year floodplain. The site adjoins the proposed K-96/Northwest Bypass interchange along the north property line.

This revised final plat has relocated Candlewood Street 150 feet to the north and platted a 100-foot wide Reserve along

the north property line. The loop street previously located in the eastern portion of the plat has been replaced with two cul-de-sacs.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. **KDOT** has requested that Reserve C be widened to a minimum of 100 feet along the north property line to provide a buffer from the proposed Northwest Bypass interchange. **KDOT** also requests that Candlewood street opening be located as far to the south as possible due to a potential grade change on Tyler. **The applicant will revise the plat to include the 100-ft buffer requested by KDOT.**
- F. If any of the intended recreational uses for the reserves includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- K. **GIS** needs to comment on the plat's street names. **Candlewood Ct in Block 2 needs to be replaced with Candlewood Cir.**
- L. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.

- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **GIBBS** seconded the motion, and it carried (10-0).

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**3-2. SUB2004-152 – One-Step Final Plat – McNeil ESTATES ADDITION, located north of 69<sup>th</sup> Street North and on the east side of 127<sup>th</sup> Street East.**

**NOTE:** This site is located in the County in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan.

**STAFF COMMENTS:**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Butler County Rural Water District No. 5. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage concept. The drainage swale and drain pipe need to be located within easements.
- E. Interior lot dimensions are needed.
- F. All access drives shall be in accordance with Sedgwick County Service Drive Code.
- G. The plat's text shall note the dedication of the street to and for the use of the public.
- H. A Block shall be designated on the face of the plat as referenced in the plat's text.
- I. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. A modification has been approved.
- J. The Applicant needs to verify the location of the pipeline easement indicated in the platting binder. The easement shall be shown if encumbering this plat, or verification provided that it is off-site or has been released.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre

or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **GIBBS** seconded the motion, and it carried (10-0).

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**3-3. SUB2004-156 – One-Step Final Plat – FAISSAL ADDITION, located on the north side of 13<sup>th</sup> Street North and west of Meridian.**

**NOTE:** This is an unplatted site located in the City of Wichita. The site has been approved for a zone change (ZON 2003-73) from B, Multi-Family Residential to LC, Limited Commercial.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes one opening along 13th St. North. The access controls are approved.
- E. Traffic Engineering needs to comment on the need for additional right-of-way along 13th St. North to conform with the 60-ft half-street right-of-way required by the Access Management Regulations. The proposed 10-ft dedication of street right-of-way is approved by Traffic Engineering.
- F. A Block shall be designated on the face of the plat as referenced in the plat's text.
- G. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARNER** moved, **GIBBS** seconded the motion, and it carried (10-0).

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**3-4. SUB2004-155 – One-Step Final Plat – WICHITA COUNTRY CLUB FIRST ADDITION, located south of 13<sup>th</sup> Street North and on the east side of Rock Road.**

**NOTE:** This is an unplatted site located within the City.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan.
- D. Traffic Engineering needs to comment on access controls. The plat needs to denote access controls along Rock Road. The final plat shall reference the dedication of access controls in the platlor's text. **One access opening is approved along Rock Road.**
- E. Traffic Engineering has requested the dedication of 10-feet of additional right-of-way along Rock Road. The street right-of-way line needs to be denoted with a bold line and revised accordingly.  
**The Subdivision Committee did not approve this recommendation.**
- F. Lot dimensions along northeasterly line need to be legible.
- G. The drainage easement needs to be located.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. The Applicant has platted a 20-foot building setback along Rock Road that represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of

Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff The street right-of-way was the primary issue discussed last week at our Subdivision Committee meeting as addressed in Item E of the staff report. Traffic Engineering originally had requested an additional 10-feet of right-of-way which would put that wall within the right-of-way. The applicant last week had expressed some concerns regarding cost for relocation of that wall. Subsequently, the additional right-of-way was not approved by the Subdivision Committee. After the meeting Traffic Engineering informed me that they were appealing that decision. Today however, there has been an agreement reached with the applicant. They have agreed to provide a 10-foot contingent street right-of-way, meaning that the right-of-way dedication would not be activated until the widening of the street and the City has agreed to pay for relocation of the wall as part of that street-widening project.

DUNLAP Is this in the CIP for widening?

PAUL GUNZLEMEN, Traffic Engineering It is not in our current CIP at this time, we are getting ready to revise the CIP.

DUNLAP How long will this be, about 10 years?

GUNZLEMEN Possibly.

BISHOP In what form is the agreement that the City will pay for the relocation of the wall? Is that part of the plat or written down somewhere in Public Works?

GUNZLEMEN It will be a part of the platting conditions.

DAN GARBER, Garber Surveying, P.A., 423 West 1<sup>st</sup>, Hutchinson, KS The Wichita Country Club Association has agreed to accept the requirement for the 10-foot contingent right-of-way and accept the City's offer then to pay for the relocation of the 8-foot wall.

DUNLAP Are there also mature trees along that line?

GARBER Not in this maintenance area, there are further north in the golf course parcel. The north part of this has the maintenance building on it and they are going to put a maintenance and storage facility, just south of the entrance there.

DUNLAP Even when the wall moves we will not lose any mature trees then?

GARBER That is correct, at least in this subdivision. Now further north I haven't looked at that. There is a half-mile of that wall that eventually will have to be moved from Rock Road.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **DOWNING** seconded the motion.

DUNLAP Again I see a taking of property that I do not feel is necessary, and for that reason I will not support the motion.

**MOTION CARRIED 9-1 (DUNLAP opposed).**

**3-5. Request for Lot Split Modification of Lot Depth to Width Ratio (Lot Split No. SUB2004-158 – Van View Addition)**

The lot split encompasses the proposed division of Lot 75 into 2 lots --Tracts A and B. The maximum lot width to depth ratio of 2.5 to 1 for residential lots is exceeded by both lots and a modification needs to be approved by MAPC.

Planning Staff is in favor of approval.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

WARNER moved, GIBBS seconded the motion, and it carried (10-0).

❖ **PUBLIC HEARINGS – VACATION ITEMS**

**4-1. VAC2004-65 – Request to Vacate Platted Access Control.**

**APPLICANTS/OWNERS:** Dean & Larna Godsey

**AGENT:** River City Construction, Inc., c/o Kathy Riddle

**LEGAL DESCRIPTION:** Generally described as approximately 627.5-feet of complete access control running parallel to the 31<sup>st</sup> Street South right-of-way and the north lot line of Lot 14, Block A, the Overview Hills Addition, Sedgwick County, Kansas

**LOCATION:** Generally located approximately ¼-mile east of 135<sup>th</sup> Street West, on the south side of 31<sup>st</sup> Street South, more specifically located on the southeast corner of the 31<sup>st</sup> Street South – 31<sup>st</sup> Court South intersection.  
(Sedgwick County – within the three-mile subdivision jurisdiction of the City of Wichita)

**REASON FOR REQUEST:** To allow a driveway onto 31<sup>st</sup> Street South

**CURRENT ZONING:** The site and all abutting and adjacent properties are zoned “SF-20” Single-family Residential

The applicant has applied for the vacation of the complete access control along the site's approximately 627.5-feet of 31<sup>st</sup> Street South frontage, to allow one driveway from Lot 14, Block A, the Overview Hills Addition onto 31<sup>st</sup> Street South. 31<sup>st</sup> Street South is an unimproved Illinois Township road. The site has access onto 31<sup>st</sup> Court South, a residential road serving the Overview Hills Addition, which intersects 31<sup>st</sup> Street South at the site's west side. The site plan shows two drives onto 31<sup>st</sup> Street South. The County Engineer has indicated that he will approve one of the drives. There are no water or sewer lines located in the 31<sup>st</sup> Street South ROW. The Overview Hills Addition was recorded with the Register of Deeds October 24, 2001.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from County Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted access control, per the approval of the County Engineer, with conditions.

(A) That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

- 1) That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time December 23, 2004 which was at least 20 days prior to this public hearing.
- 2) That no private rights will be injured or endangered by the vacation of the above-described portion of platted complete access control and the public will suffer no loss or inconvenience thereby.
- 3) In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted complete access control described in the petition should be approved with conditions:

- 1) Vacate that portion of platted access control along the site's 31<sup>st</sup> Street South frontage, as approved by the County Engineer to allow one drive onto 31<sup>st</sup> Street South. Provide Staff with a metes and bounds description of the location of the one drive.
- 2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- 3) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- 4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion of platted access control along the site's 31<sup>st</sup> Street South frontage, as approved by the County Engineer to allow one drive onto 31<sup>st</sup> Street South. Provide Staff with a metes and bounds description of the location of the one drive.



- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (3) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**HENTZEN** moved, **DOWNING** seconded the motion, and it carried (10-0).

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**4-2. VAC2004-66 - Request to Vacate the Western Portion of Wichita Street's Platted Right-of-Way.**

<b><u>APPLICANT/AGENT:</u></b>	Builders Inc., c/o Elton Parsons
<b><u>LEGAL DESCRIPTION:</u></b>	Generally described as the undeveloped portion of the platted Wichita Street ROW, between 1 <sup>st</sup> & 2 <sup>nd</sup> Streets, abutting the east side of Lots 25 – 47, odd, the Waterman's Addition, Wichita, Sedgwick County, Kansas
<b><u>LOCATION:</u></b>	That portion of Wichita Street, generally located between 1 <sup>st</sup> Street & 2 <sup>nd</sup> Streets
<b><u>REASON FOR REQUEST:</u></b>	To acquire for private use
<b><u>CURRENT ZONING:</u></b>	Site is public ROW. Properties located west, north and east of the site are zoned "LI" Limited Industrial. Properties located south of the site are zoned "LI" and "CBD" Central Business District

The applicants are requesting consideration to vacate the western undeveloped portion of Wichita Street, between 1<sup>st</sup> Street and 2<sup>nd</sup> Street, where it abuts the east side of Lots 25 – 47, odd, the Waterman's Addition. The proposed vacated portion begins approximately 16-feet west of the curb on the developed portion of the Wichita Street. The applicant's parking abuts this undeveloped portion of Wichita Street, which is landscaped undeveloped ROW. An abandoned railroad ROW runs over a portion of this section of Wichita Street. The City acquired the abandoned railroad ROW through a quitclaim. Reversion rights appear to be to the applicant. There is a water line in the southern portion of the ROW, but no sewer line or manholes. Franchised utilities need to comment on the vacation request. Portions of Wichita Street, north and south of the site have been vacated in the past. The results of these vacations are that Wichita Street does not continue south to Douglas Avenue or north to Central Avenue. The Waterman's Addition was recorded with the Register of Deeds May 30, 1870.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted Wichita Street ROW as generally described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 23, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted street ROW and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted street ROW described in the petition should be approved with conditions:
- 1) Per the recommendation of the public and franchised utilities retain that portion of Wichita Street as needed as a utility easement.
  - 2) Provide a restrictive covenant tying and binding the properties together.
  - 3) Provide the Traffic Engineer with a survey and legal description of the proposed vacated portion of Wichita Street, for review and approval. The approved legal description will be used in the Vacation Order's legal description. This must be provided prior to this case going to the Wichita City Council for approval.
  - 4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  - 5) All improvements shall be according to City Standards.



- 6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- 1) Per the recommendation of the public and franchised utilities retain that portion of Wichita Street as needed as a utility easement.
- 2) Provide a restrictive covenant tying and binding the properties together.
- 3) Provide the Traffic Engineer with a survey and legal description of the proposed vacated portion of Wichita Street, for review and approval. The approved legal description will be used in the Vacation Order's legal description. This must be provided prior to this case going to the Wichita City Council for approval.
- 4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- 5) All improvements shall be according to City Standards.
- 6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**HENTZEN** moved, **DOWNING** seconded the motion, and it carried (10-0).

❖ **PUBLIC HEARINGS – ZONING ITEMS**

5. **Case No.: ZON2004-65** Wichita Ear Properties, LLC c/o Richard Cummins (owner) Walter Morris & Sons c/o Mike Boyd (contract purchaser) Request Zone change from "B" Multi-family Residential and "GC" General Commercial to "LC" Limited Commercial on property described as;

Reserve F, Except the North 30 feet, on Hillside Avenue Maple Grove Addition, Wichita, Sedgwick County, Kansas, and except the East 20 feet thereof for Street, together with Reserve B, except the North 38 feet, on Lorraine Avenue Maple Grove Addition Wichita, Sedgwick County, Kansas and Except that part described as follows: beginning at the southeast corner of said Reserve B thence north 8 and one-half feet; thence in a southwesterly direction to a point twelve and four hundredths feet (12.04) west of the southeast corner of said Reserve B; thence east 12.04 feet to the place of beginning. Generally located South of Central and west of Hillside.

**BACKGROUND:** The applicant requests a zone change from and "B" Multi-family Residential "GC" General Commercial to "LC" Limited Commercial on what can generally describe as a southern portion of Lot F, a portion of a drainage reserve, and the southern ¾ portion of Lot B, all in the Maple Grove Addition. The subject properties are located between Hillside Avenue & Lorraine Street, approximately 305-feet south of Central Avenue. The subject site is currently developed as a brick, one story medical office with a parking lot on the Hillside Avenue frontage (Lot F, zoned "GC" and "B") and vacant land (Lot B, zoned "B") on the Lorraine frontage. The applicant proposes redevelopment of the property as a restaurant with a drive up window.

East of the subject site and across Hillside Avenue is PUD01-02. Its uses including free standing general retail, a neighborhood-shopping strip, a restaurant, a hotel/motel, and office. South of the subject site is the previously mentioned drainage easement (Misc. Book 575, Page 217), which has part of the site's parking lot on it. South of the parking lot and within the drainage easement is a drainage channel, which runs west, over what used to be 3<sup>rd</sup> Street, to its intersection with the drainage channel that runs parallel with IH-135. There are four-plexes located south of the drainage channel. There is also a duplex south of the site and on the north side of the drainage channel. All properties south of the subject site are zoned "B". North of the subject site there are an offices and a Spangles restaurant with a drive up window, all of these properties are zoned "GC". There is also a vacant single-family residence, zoned "B". The Wesley Hospital complex is located northeast of the subject site, on the northeast corner of Hillside Avenue and Central Avenue. Properties west of the site, across Lorraine Street, include single-family residences and a small apartment complex, all zoned "B".

Any development on the subject property will be required to meet screening, compatibility standards and landscaping. Access control shall be reviewed, by the Traffic Engineer, according to the redevelopment of the site.

**CASE HISTORY:** The subject properties are platted as a part of the Maple Grove Addition, which was recorded with the Register of Deeds July 10, 1886. DAB I considered this request at their January 3, 2005 meeting and recommended approval of the zone change with the provisions of PO #150.

**ADJACENT ZONING AND LAND USE:**

NORTH: "GC", "B" Offices, restaurant with drive up window, vacant residential  
SOUTH: "B" Four-plexus, duplex  
WEST: "B" Single-family residences, small apartment complex

EAST: "PUD" Office, retail, restaurant, hotel/motel

**PUBLIC SERVICES:** The site has access to Hillside Avenue and Lorraine Street. Hillside is a five-lane arterial along the site. Current traffic volumes, at the Hillside – Central Avenues intersection are approximately 22,000 and 20,000 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Central and Hillside will increase to approximately 24,000 and 26,000 vehicles per day. Lorraine Street is a paved residential street that intersects with Central Avenue on its north end and dead ends at the drainage channel on its south end. Water, sewer and all other utilities are available.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide of the Comprehensive Plan classified the subject tract as "high density residential" on its western portion and "commercial" on its eastern portion. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request, with the provisions of the proposed protective overlay, conforms to the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** Potential negative effects, from the expansion of commercial uses onto the western "B" zoned portion of the site, on the residential neighbors to the south and west would be mitigated by existing codes and a protective overlay.

Based upon information available prior to the public hearings, Staff recommends APPROVAL of "LC" zoning subject to PO #150.

1. Dedication by separate instrument of access control onto Hillside Avenue and no access onto Lorraine Street, per the Traffic Engineer's recommendation.
2. Provide a restrictive covenant binding and tying the properties together.
3. The following uses are prohibited: manufactured home, correctional placement residence (limited and general), cemetery, broadcast and recording studios, animal care general, hospital, heliport, printing and coping limited, convenience store, car wash, construction sales and service, night club, tavern, pawn shop, recreation and entertainment indoor, vehicle repair limited, service station, reverse vending machine, wireless communication facilities, recycling collection station (private), asphalt or concrete plant, outdoor storage.
4. Maximum building height of 35 feet.
5. The speaker order board shall not project sound so as to be audible from the residential developments located to the west or the to the south, or any other residential use in the vicinity.
6. On site pole lights no higher than 14-foot. They shall be hooded and directed onto the site and away from the residential developments west and south of the site.
7. The trash dumpster shall be located a minimum of 20-feet from the west, north and south property lines with solid screening around it.
8. Solid screening around the south, west and north property lines shall be provided.
9. Signage will be as allowed in the "LC" zoning district, with no signs allowed on the west, north or south sides of the property or on the building.
10. Redevelopment plans for of the portion of the site located in the drainage easement, which is currently a parking lot, will need to be reviewed and approved by Strom Water, prior to construction.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood located around the Hillside Avenue - Central Avenue intersection is dominated by the Wesley Hospital complex and the retail/commercial development south of Wesley. Retail, both sit down restaurants and restaurants with drive up windows, banks, medical offices, offices, and a motel have also developed around the intersection. The more recent of these non-residential developments include sites with a Planned Unit Development (PUD) and protective overlays (PO). The provisions of the PUD and the POs were implemented to lessen the adverse impact of these developments on the residential neighborhoods abutting them. Most of the residential development around the subject site consists of older single-family residences, some older four-plexes and duplexes, and one more recently built small apartment building.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GC" General Commercial and "B" Multi-family Residential on its eastern portion and "B" on its western portion. The property is currently developed with a one-story, brick medical office on the "GC" zoned portion of the property, which is a use permitted by right. The eastern portion of the site zoned "B" is developed as the medical office's parking. The western "B" zoned portion of the site is not developed and is probably too small to approach the kind of density allowed by this zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed "LC" zoning would allow similar types of development on the "GC" zoned portion of the site. The implementation of the provisions of the Protective Overlay, the requirements of the Landscape Ordinance and the standards of the Unified Zoning Code over the whole site, and specifically on the "B" zoned portion of the site, would limit the adverse impact on the adjacent residential developments.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "commercial" or "high density residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. With the provisions of the proposed Protective Overlay the request conforms to the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Community facilities should be minimally impacted.

BARFIELD Why is there no access allowed on Lorraine?

LONGNECKER The reason we recommended no access on Lorraine is because it is not an arterial road and we have access on Hillside, which is an arterial. Locational criteria for commercial uses state that they must be located adjacent to an arterial for access; access onto residential streets is not recommended. This would keep traffic using the drive-thru restaurant that is proposed from going through this neighborhood area that is made up of "B" Multi-family zoning, and it is developed as single-family residential.

BARFIELD I think if you look at the traffic count on Hillside and when you take into consideration that Lorraine is a dead end there; so they can only go one way, and it would have to be a right out.

LONGNECKER They would have to go to Central, that is correct.

BARFIELD I don't understand that. It appears to me so that you would prevent some traffic congestion on Hillside if you were allowing access on Lorraine.

MILLER The Comprehensive Plan contains specific policies that say we are not to direct commercial traffic on residential streets, and Lorraine would be classified as a residential street, so that is why we were doing that. We have had other cases similar to this where commercial backed up to a residential street, and there was an opening, and we got a lot of complaints about lights shooting into peoples' living room windows and bedroom windows, as they exited. It is not a critical issue for us. We are trying to be consistent.

BARFIELD I am familiar with Lorraine and I think that both its east and west sides are commercial. You have an apartment there on the south end of the west side of the street, and I believe you have two houses on the east side, and those would be beyond the exit points to this proposal.

MILLER Certainly you can recommend to eliminate that condition. We are trying to anticipate what would be a problem.

LONGNECKER I would point out that at the District Advisory Board meeting, that access onto Lorraine was a concern expressed by the Board. They wanted to keep commercial traffic off Lorraine to protect the residences that are there.

SCHLEGEL Did the applicant object to that restriction?

LONGNECKER No they did not.

BARFIELD There was a Wal Greens drug store there that had a drive-up window that was accessed off of Lorraine, located at the southwest corner.

LONGNECKER I think the nature of the traffic between the drive-thru pharmacy and the parking for these businesses here is a lot different than what you get with a drive-thru restaurant that is going to be staying open, probably until 10 p.m. The District Advisory Board expressed concerns about being able to protect the residences that are along Lorraine on the west side. The policy is to keep commercial traffic off of residential streets.

DUNLAP You just mentioned that this business would be open until 10 p.m. Up on the corner I believe they are open 24- hours.

LONGNECKER I am assuming that time would be typical hours for a drive-thru restaurant, and was trying to compare it to the time a pharmacy and the other local businesses were open. That time is not written down.

DUNLAP The buildings that are there now will be taken down, and a new building built?

LONGNECKER Actually this residential building shown here on the aerial is already down, and the Ear Clinic here will also be taken down. The whole side will be cleared.

BISHOP I note from the DAB memo that the owners have purchased the properties abutting the property on the west side, is that across Lorraine?

LONGNECKER The applicant has bought the property where the Ear Clinic sits and the vacant abutting west property that is fronting Lorraine to make a larger site for the redevelopment of the land.

GIBBS The developer/owner agrees with staff recommendations?

LONGNECKER Yes.

TERRY SMYTHE, Baughman Company We are in agreement with staff comments. There is a representative here today from one of the homes to the west, if you have any questions about his thoughts, as to whether we should have access to Lorraine or not. We don't need it and I am sure he doesn't want it.

BARFIELD How many residences are there on Lorraine?

SMYTHE I don't know how many units are in the apartment complex down there, but if you count that as one there are probably about six all together, if you go up to the south side of Wal Greens.

BARFIELD How far is the nearest resident from where your drive-thru is going to be? Its on the south side correct?

SMYTHE Of the building?

BARFIELD Yes.

SMYTHE It should be, but we are still doing site plans.

BARFIELD How far is the nearest residence from that drive-thru?

SMYTHE I would say 300 feet. The building is going to be in that rough location where the Ear Clinic is today, but just centered more on that lot.

WARNER If you had the access to Lorraine would you do that?

SMYTHE At this point and time the applicant says that he doesn't want access because he understands the problems it could cause.

GREG KITE, I am a local attorney here in town. The property in question that I am here on behalf of is my grandfathers, Shelby Whitehead, 425 N. Lorraine. I am in agreement with the zone change but in this instance we would prefer not having access to Lorraine. I don't think it is necessary and it would certainly be not something that any of those residences in those single-family dwellings would want on the west side of Lorraine. There are four single-family dwellings there with the apartment in between. To have access on Lorraine would be a disaster. The access on Lorraine up there where the drug store was is a different proposition because it is at the corner, and it is isolated and therefore it is not a problem. Down below in my grandfather's area, access onto Lorraine would be a problem, and it would not be isolated.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **BISHOP** seconded the motion.

BISHOP I am not real crazy about drive-thru situations. At one time that entire area looked like it was going to be whole lot more pedestrian friendly then it has turned out to be and I think that is regrettable. I think it is possible with proper design to get drive-thru situations on very, very small lots, and if you don't believe it look at every Star Bucks in town and they have managed to squeeze those things onto very small lots, and while they may not be ideal as traffic situations go, they do seem to thrive.

**MOTION CARRIED:** 10-0

6. **Case No.: ZON2004-66** - Gerald and Shannon Michaud (owners) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial with a Protective Overlay on property described as;

Tract A: That part of the NE/4 of Section 2, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying south of the south line of Flood Control Dedication, (Film 17, Page 1294), lying northeasterly of the northeast right-of-way of George Washington Blvd., lying west of the west line of Flood Control Dedication, (Film 17, Page 1295), and lying north of a line lying 1320.00 feet north of and parallel with the south line of said NE/4. (350-foot radius)

Tract B: That part of the NE/4 of Section 2, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying south of the south line of Flood Control Dedication, (Film 17, Page 1294), lying east of the east line of Flood Control Dedication, (Film 17, Page 1295), lying west of the west right-of-way line of Oliver St., and lying north of a line 1320.00 feet north of and parallel with the south line of said NE/4. (350 foot radius)

Tract C: That part of the NE/4 of Section 2, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the intersection of the east line of said NE/4 with the southeasterly extension of the northeast right-of-way line of George Washington Blvd., thence northwesterly along said extended northeast right-of-way line, 347.28 feet; thence northeasterly with a deflection angle to the right of 110 degrees 27'36", 295.76 feet to a point on the east line of said NE/4; thence southerly along the east line of said NE/4, 369.15 feet to the point of beginning, EXCEPT Oliver Street right-of-way and EXCEPT Kansas Turnpike Authority right-of-way. Generally located at the northwest corner of George Washington Boulevard and Oliver.

**BACKGROUND:** The applicant requests a zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on portions of two lots amounting to approximately five acres. The remainder of the application area, including the existing building, is already zoned LC. The proposed rezoning area lies along a public drainage-way, and is proposed to accommodate parking for a future US Postal facility. The applicant proposes a Protective Overlay (PO) on the entire 16.16-acre property. The subject property is located northwest of the Oliver and Washington Blvd. intersection. The site houses a large warehouse-type building and associated parking. North of the application area is a drainage-way, and GC/LC zoned retail uses. South and west of the application area is I-35, SF-5 zoned open space, and LC zoned vacant land. East of the application area are LC and GC zoned

commercial uses, including auto sales and services. West of the application area are MF-29 zoned multi-family housing units in the Plainview neighborhood.

**CASE HISTORY:** The subject property was approved for platting by the MAPC on December 9<sup>th</sup> 2004 as the Krumsick and Barrett Addition.

**ADJACENT ZONING AND LAND USE:**

NORTH: "GC", "LC"	Retail uses
SOUTH: "SF-5", "LC"	Open space, vacant
WEST: "MF-29"	Tri-plex residences,
EAST: "GC", "LC"	Auto sales and service, retail, office, warehousing

**PUBLIC SERVICES:** The site has two access points to both Oliver and George Washington. Oliver and George Washington are four-lane arterials at this location; both have a 100-foot right of way. The 2030 Transportation Plan designates that both will remain a 4-lane arterial. Current traffic volumes at the site are 13,664 vehicles per day on Oliver, and 6,624 a day on George Washington. Water, sewer and all other utilities are available.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide of the Comprehensive Plan classifies the application area as "commercial". The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request, with the provisions of the proposed protective overlay, conforms to the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** The majority of the application area is already zoned "LC"; potential negative effects from the expansion of "LC" zoning and commercial uses onto the "SF-5" zoned portion of the site would be mitigated by existing codes and a protective overlay.

Based upon information available prior to the public hearings, Staff recommends APPROVAL of "LC" zoning subject to the applicant's proposed PO, PO #151.

1. Parking shall be provided in accordance with Section IV of the Unified Zoning Code.
2. Development of property shall comply with Section III-B-14 of the Unified Zoning Code (the "LC" limited commercial district).
3. Setbacks are as indicated on the plat of Krumsick & Barrett Addition.
4. A Drainage Plan shall be submitted to City Engineering for approval. Required guarantees for drainage shall be provided at the time of platting improvements.
5. Signs shall be in accordance with the Sign Code of the City of Wichita.
6. Access Controls shall be as shown on the final plat.
7. All exterior lighting shall be shielded to direct light disbursement in a downward direction.
8. All property shall share similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, etc.), and shall comply with the Unified Zoning Standard in Article IV-B.4.
9. Utilities shall be installed underground on all parcels.
10. Landscaping for this site shall be required as follows:
  - a. Development of all land shall comply with the Landscape Ordinance of the City of Wichita. Partial waivers can be granted by the Director of Planning based upon site constraints.
  - b. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material. This plan shall be submitted to the Planning Department for their review and approval prior to issuance of a building permit.
11. Rooftop mechanical equipment shall be screened from ground level view per Unified Zoning Code.
12. Trash receptacles, loading docks, outdoor storage, and loading areas shall be appropriately screened to reasonably hide them from ground view, with these areas being screened by a screening wall/fence consisting of materials of the main structure and being connected to the building whenever possible.
13. All buildings shall share uniform architectural character, color, texture, and the same predominate exterior building material, as determined by the Director of Planning.
14. Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits.

15. The Transfer of title of all or any portion of land does not constitute a termination of the Protective Overlay or any portion thereof, but said Protective Overlay shall run with the land and be binding upon present owners, their successors and assigns.
16. The development of this property shall proceed in accordance with the Protective Overlay as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
17. Any major changes in this Protective Overlay shall be submitted to the Planning Commission and to the Governing Body for their consideration.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by commercial zoning and uses. The nearest residential zoning and uses are across a four-lane arterial street from the site. The provisions of the proposed PO should minimize any potential adverse impact on the residential neighborhood to the west.
2. The suitability of the subject property for the uses to which it has been restricted: The property to be re-zoned is currently "SF-5" Single-family Residential, is part of a larger "LC" zoned parcel to the south, and abuts a drainage way to the north. This property would not be attractive for residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed "LC" zoning, with the proposed PO, would have negligible adverse impacts on the nearby residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. With the provisions of the proposed Protective Overlay the request conforms to the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Community facilities should be minimally impacted.

BISHOP I noted there was not a District Advisory Board meeting.

MCNEELY There was no District Advisory Board meeting scheduled. We as staff try to make informed logical judgment calls on these cases. When we saw what was to be rezoned is really just a cleaning up of this site, and all the developed portion of this site are already zoned "LC" Limited Commercial, we did not see that it was necessary to go to the DAB. I have had a couple of calls from the neighborhood organization representatives who are concerned about this, and I believed that once I explained that the vast majority of this site is already zoned "LC" Limited Commercial, it is just some small portion to be rezoned from "SF-5" to "LC", I don't think there were to many concerns.

BISHOP This property, in relationship to parkland, it says open space to the south is vacant, what does that mean?

MCNEELY It is on the other side of George Washington from this open space, and if memory serves me right that is currently owned by the City and used to be a private Boeing park for their employees. It is across the street. George Washington is a four lane arterial from this open space. I am not familiar with any other relationship between this site and that open space. We didn't see that rezoning these corners really had any particular effect. The property can be used just as it is right now without the rezoning. The applicant is just trying to make optimal use of the site.

HENTZEN Could you point out on the map what is now zoned "SF-5"? Can you tell us what portion are we talking about?

MCNEELY These two geometric figures you see here with the bold outline, that is the entire application area. Everything that you see red is currently zoned "LC". It is these northern portions that are white that are currently zoned "SF-5," and this southern triangle that I am pointing to is currently "SF-5".

HENTZEN Where is the building on that lot?

MCNEELY The building and its associated paved parking are all currently zoned "LC".

HENTZEN It is all paved parking?

MCNEELY Of the current parking, yes.

HENTZEN Why are we requiring 17 conditions about landscaping and everything else, and it says the request is for parking for US Postal Service.

MCNEELY The facility is to be used by the postal service, and I believe as some form of transfer station. The applicant should have more explanation on the use.

TERRY SMYTHE, Baughman Company I am here on behalf of the current owner and the future owners. This is the old store down there. The US Postal Service is wishing to have a facility down in this area. They need approximately the size of the current

building, the square footage, and to met all of the necessary parking requirement and seasonal parking requirements, demanded upon Christmas, and that kind of stuff they need to complete the zoning that is currently "SF-5" to allow parking. The triangle to the west, on the other side to Gyp Creek, is estimated to be overflow parking only during the seasonable times. So we really need that square footage of building, and that much parking to handle this transfer of mail for the Post Office.

BISHOP I am not finding a Protective Overlay, which restricts, does it restrict the use along with the "LC" to a postal service installation, does that run with the land?

SMYTHE The Protective Overlay basically describes what you will find in a Community Unit Plan. It does not specifically prohibit anything other than a postal service building but it provides you with all the architectural controls, the lighting standards and noise standards that are normally found in a larger CUP.

KERIN SMITH 2240 S. Crestway This is in a residential area directly north of what you see along here north of Pawnee. I am the President of the Meadowlark Association of Neighbors, which is the neighborhood association for that area, and I would like to recognize that I have several other members of the association here with me today. We are here today to protest the fact that this issue is being brought before the MAPC without going to the DAB first. We believe that this action bypasses the procedures that have been set up by the City to inform citizens and to allow for input and recommendations. We recognize that the proposed postal facility that we have talked about here can be sited on the "LC" land without any action by anybody at all. We do appreciate the concessions made in volunteering to add the Protective Overlay not only to the property where the rezoning is requested but also to the existing "LC" property as we see it here.

What we don't know has to do with issues that impact our neighborhood, such as traffic, and drainage. They say that they are planning parking for this new "LC" property, but if it is to become a parking lot there is no access between the two. There is a drainage ditch in between there. How is access going to be created across this drainage ditch between these two facilities? How much increase in traffic will there be to and from this area? What kind of traffic is anticipated? Is this going to be a huge amount of 18-wheelers going up and down the street there? If so, are the arterial streets adequate to carry this amount of traffic? What direction is most of this traffic expected to go, on George Washington, on Oliver, or go south to the Turnpike entrance? Is there any increase to be done in traffic lanes? Any turn lanes; in access openings to the area; is what's there adequate? Traffic controls?

Will the new "LC" property drain into the creek? Is that creek adequate to drain the property without adding to flooding problems in the nearby neighborhood? These are questions that those in our neighborhood are concerned about. Until today the neighborhood has had no answers. I would like to see this matter sent to the DAB.

GIBBS What are the boundaries of your neighborhood association?

SMITH Pawnee to Oliver, north to Mt. Vernon, and then a little bit on Grandview that is taken around the golf course, back west to George Washington on Mt. Vernon and then back to Pawnee.

GIBBS It doesn't go south of Pawnee?

SMITH Right, this project may be perfectly fine.

DUNLAP The impression you have received is obviously not the one that we want to present. We are not trying to ramrod anything through.

SMYTHE As you all well know that about 1-2 months ago this body heard a plat review that we did on this site that determined all the issues in terms of access control, and drainage issues, of which there are none. The plat is in process today. The only reason that we are having to do this is because they want to do some expansion of that building, and there is some unzoned property; those three slivers that don't have the proper zoning for the parking lot. This association up along the north side of Pawnee, I have dealt with them a couple of times before, they are good people and they want to be educated about the issues.

When we platted the property, one the requirements is that we post a sign on the property saying that it is under consideration for development review, so there are plenty of opportunities to call. We also advertise the zone cases in the paper and send notices to the public or the MAPD does. I will be happy to go to the DAB.

The "LI" zoning is up along Pawnee. I remember that from a couple of years ago. This is "LC" about 1/4 mile south of where they are. I don't see any problems. If you want me to take it to the DAB, please don't slow down this part of it getting to City Council. When it goes to City Council, if the City Council member in this district has a problem with it he would send it back anyway. If you want me to go to the DAB we could.

TAPE CHANGE

BISHOP Is there a DAB meeting in the meantime? Would we have to defer for 30 days?

MILLER The next DAB meeting will be the 1<sup>st</sup> week in February.

SCHLEGEL You would not have to defer the action of the MAPC because the DAB recommendations are made for City Council rather than the Planning Commission.

BISHOP Yes, I know. That is because we did not succeed in getting the ordinance changed, and they also did not review it at the end of the year like that promised they were going to.

JOHNSON That is the way it is though.



HENTZEN You are representing the applicant? Are you in agreement with the 17 requirements?

SMYTHE Yes, we put that together. One other question about a deferral. This is a US Government facility, and if you think you are picky try dealing with the Federal Government. I would rather not defer, and I would rather let it go and if the City Council member has a problem with it at City Council, after his DAB board hears it, and sends it back here then you guys will have another shot at it if you want.

BISHOP I know that it may not seem like a big issue as far as the neighborhood is concerned. There are some neighbors here today to talk about it. They happen to be a neighborhood association that follows the planning process really closely. Most neighbors and neighborhoods depend on the DAB meetings to truly learn about what is happening. I know that there is a Plainview Neighborhood Association that would be interested as well; they may not have picked up on the sign. Following the DAB agenda nothing alerts them if anything is going on there.

MILLER We sent them a notice.

BISHOP The Plainview Neighborhood Association?

MILLER Yes.

SHERMAN My understanding is that there is nothing in that building right now, it is vacant?

SMYTHE In my opinion it is vacant.

GIBBS Are they going to demolish the building or just remodel it?

SMYTHE I believe they will try to remodel it, and add a little to it, and clean up the façade.

MILLER I have Neil in here that could speak to the platting and access controls are if you would like him to answer those questions.

DUNLAP I think we have past that point.

JOHNSON I respect the neighborhood to the north of this but I also have been here when cases came on the property due north of this and south of Pawnee, and I know that there was some extensive work down on that and finally got that all approved. Where it is "LI" north of this proposed zoning change I would think that "LI" might end up having some truck traffic to it, whatever kind of facility might go in there. I agree with staff that this is cleaning up because there is a buffer between this zoning and what is north.

**MOTION:** To approve per staff comments, and if staff recommends that it be sent to the DAB prior to.

**JOHNSON** moved, **WARNER** seconded the motion.

SHERMAN Earlier it was mentioned that it went to the DAB, it was mailed to the DAB or what? They are the only ones that got the notice?

MILLER We send notices to neighborhood associations that abut application areas, but we did not send it to the DAB, but we do send notices to neighborhood associations and the Neighborhood Assistant, and the City Council member.

BARFIELD If this is approved when would it go to the City Council?

SIMMERING Probably February 15<sup>th</sup>, once we get the packet ready.

DUNLAP Is there a DAB meeting between now and then?

MILLER Yes, February 2<sup>nd</sup>.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation and this request be sent to the DAB prior to going to City Council.

**BARFIELD** moved, **BISHOP** seconded the motion.

GIBBS Can we do that?

SCHLEGEL I think that is a request that we can ask that it be placed on the next DAB agenda. I can't guarantee that will be on the DAB agenda. It is really up to the City Council member for that district. In all likelihood it will be on that agenda.

JOHNSON I am pretty sure it will end up on the DAB meeting on February 2<sup>nd</sup>. Say the DAB decided not to meet and they had to wait another 30 days, I don't feel it is right for this to be held up, and I think with the neighborhood here I am sure they will put enough pressure on the DAB to have a meeting but I will not support the motion that it will go there prior to City Council, it could delay the case for 30-60 days.

BISHOP I have a problem with the fact that it is still after the MAPC meeting, and I recognize that is a problem with the ordinance as it is written. That is not the way it has worked in the past and it has made it very easy for us to discount DAB input because they just advise City Council members they don't have anything to do with us. At least there is a way that we could recognize the significance of the DAB by requiring it to go to the DAB prior to the City Council decision on it.

JOHNSON This building has been vacant for a longtime and to see that somebody is going to come in and make some changes on it, I am sure they have spent a lot of money and I think it will probably look better then it does today. I didn't think that anybody would ever utilize this facility with what is stored just north of this.

BARFIELD Here is the basis for my substitute motion. We have a neighborhood association over here that has the perception that this is not following standard procedure. That perception is real in their minds, and I think we have an opportunity to change that perception or correct that perception and I think we ought to do it. I don't see where it will cause any delay in the project or cause any harm to the applicant.

**SUBSTITUTE MOTION CARRIED:** 8-2. **JOHNSON, DUNLAP** opposed.

7. **Case No.: ZON2004-64** – Phyllis Schwindaman / Terry Smythe (Baughman P.A.), Leo Goseland (Plaza Commercial Real Estate) Request Zone change from "SF-5" Single-family Residential to "NR" Neighborhood Retail on property described as;

Lots 13, 14, & 15, Block B, Westview Addition, Wichita, Sedgwick County, Kansas. Generally located at the northwest corner of Douglas and Ridge Road.

**BACKGROUND:** The application area is located at the northwest corner of Ridge Road and Douglas Avenue. The site is located approximately one-quarter mile north of the Maple and Ridge Road intersection. It is a 1.25-acre site made up of three platted lots, Lots 13, 14 and 15, Block B, Westview Addition, currently zoned "SF-5" Single-family Residential. Two of the lots appear to be developed with single-family uses. The northernmost lot appears to be vacant. As stated on the application, the applicant is seeking "NR" Neighborhood Retail zoning in order to "provide neighborhood retail opportunities on property no longer valid for residential uses." The site has a 30-foot platted building setback established along the south and east property line.

While the application area is zoned single-family, the remainder of the block (land located north and west of the site) on which it is located is zoned "MF-18" Multi-family Residential, and developed with four-plex and apartment buildings. Land to east is developed as single-family homes and zoned "SF-5" Single-family Residential. The lot to the south of the site is zoned "GO" General Office, and developed with an office building. The remainder of the land to the south is zoned "SF-5" Single-family Residential and developed with single-family uses. Other than the "GO" zoned lot located to the south, it is 750 feet from the application area to the closest non-residentially zoned property ("LC" Limited Commercial) located at the Maple and Ridge intersection.

"NR" zoning limits individual commercial uses to a maximum of 8,000 square feet of gross floor area. No outdoor storage or display is permitted for commercial uses. Ground signs are permitted, one per business up to 32 square feet in height, and they must be spaced 50 feet apart if there are more than one pole sign. Building heights of up to 35 feet are permitted. A site this size, developed at 30 percent could allow up to 16,335 square feet of gross floor area, which could generate up to 686 average daily trips.

**CASE HISTORY:** The Westview Addition was recorded in 1952.

**ADJACENT ZONING AND LAND USE:**

NORTH: "MF-18" Multi-family Residential; apartments  
SOUTH: "GO" General Office, SF-5 Single-family Residential; office, single-family residences.  
EAST: "SF-5" Single-family Residential; single-family residences  
WEST: "MF-18" Multi-family Residential; four-plex residential

**PUBLIC SERVICES:** Typical sewer and water services are available. Ridge Road is a four-lane arterial carrying between 23,000 and 26,000 average daily trips. At this point north of Douglas, Ridge Road has 50-feet of half-street right-of-way. Just south of Douglas, Ridge Road widens to 60-feet of half-street right-of-way. Sixty feet is the arterial street standard. Douglas is a local two-lane street with 30 feet of half-street right-of-way. Since the site was platted for residential uses, neither street frontage has any access controls. If the request is approved, access controls should be granted.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" depicts this site as appropriate for "low density residential" uses. The Plan further states that new strip commercial development should be located in areas identified for expansion in the "Wichita Land Use Guide." Commercial location guidelines state that commercial sites should: be located adjacent to arterial streets or major thoroughfares; be coordinated with high-density residential, employment or other intensive uses; incorporate site design features that limit noise, lighting or other aspects of commercial activity that may adversely impact surrounding residential land uses; locate in compact clusters or nodes versus extended strip developments; and if not located in planned centers or nodes, should be guided to other areas where such development already exists; and where traffic patterns, surrounding land uses and utilities can support such development.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However, if the Commission feels the request is appropriate, any approval should be subject to the dedication of access controls.

This recommendation of denial is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Surrounding properties are zoned "MF-18" Multi-family Residential and "GO" General Office, but a significant majority of nearby properties are "SF-5" Single-family Residential. Land uses range from an office, apartments, four-plex and single-family residences. Ridge Road is a busy arterial roadway. The character of the area is predominately residential.

2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" and developed with single-family uses. The "SF-5" zoning is probably not suitable. "TF-3" Two-family Residential or multi-family residential zoning up to "MF-18" is probably more appropriate given the duplex and apartment development found on the rest of the block, and the site's frontage along Ridge Road. More intensive zoning than MF-18 is probably not appropriate since this site does not meet those higher zoning classifications' location guidelines. The application area is a mid-mile location that does not meet office or commercial location guidelines.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request will introduce the potential for retail and commercial uses not currently present in the neighborhood. These more intense uses can generate higher traffic volumes and congestion; introduce signage not currently allowed on most of the nearby lots; add evening and night-time noise and increased lighting that could negatively impact nearby residents' use and enjoyment of their property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If denied, the applicant could potentially miss out on increased income from this site. Approval would encourage similarly situated properties seek more intense rezoning leading to the commercial stripping out of section line roads, leading to increased land use and traffic conflicts detrimental to the public's welfare and safety.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is not in conformance with adopted plan recommendations and commercial location guidelines.
6. Impact of the proposed development on community facilities: If rezoned, it is likely the site will generate a higher volume of traffic than it does today, triggering a need for additional right-of-way along Ridge.

DALE MILLER Planning staff The applicant and the staff are in agreement, but at your stations today is a blue memo from the District Advisory Board, and it is a little different than what the original staff report was, but the applicant is satisfied with those conditions and staff is in agreement as well. So unless you have questions about the changes we are comfortable with the application as amended.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **DOWNING** seconded the motion, and it carried (10-0).

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8. Case No.: ZON2004-63 – Harrison Park Associates c/o W. Duane Wadley (owner/applicant); Classic College of Hair Design c/o Bill Hancock (contract purchaser) Request Zone change from "NR" Neighborhood Retail to "LC" Limited Commercial and an amendment to Protective Overlay #3 on property described as;

NR to LC: Lot 1, Harrison Park 3rd Addition.

P-O: Lots 1 & 2, Harrison Park 3rd Addition. Generally located South of Lincoln and east of Webb Road.

**BACKGROUND:** The applicant requests a zone change for 4.5 acres located south of Lincoln and east of Webb from "NR" Neighborhood Retail to "LC" Limited Commercial. The applicant has a contract to sell a portion of the subject property to a cosmetology school. The Unified Zoning Code defines a cosmetology school as a "Vocational School", which is first permitted by right in the "LC" district. The subject property is restricted by the provisions of Protective Overlay District #3, which includes zoning restrictions pertaining to landscaping, signs, architectural control, lighting, traffic, screening, and permitted uses. The applicant proposes to amend Protective Overlay District #3 to continue the same zoning restrictions on the subject property, except that a "Vocational School" would be permitted in addition to the uses currently permitted on the subject property (see attached "Proposed Amendment to Protective Overlay District #3").

The character of the surrounding area is predominately residential with a mixture of low-density and high-density housing as well as institutional uses in the vicinity. The subject property was approved for commercial development in 1996 but has remained vacant. The property to the north is zoned "SF-5" Single Family and is developed with a church. The properties to the south and east are zoned "SF-5" Single Family and are developed with single-family residences. The properties to the south are zoned "B" Multi-Family and are developed with residential uses. The properties to the west across Webb are zoned "TF-3" Two Family and are developed with single-family residences.

**CASE HISTORY:** The subject property was approved (Z-3205) for "NR" Neighborhood Retail zoning subject to the provisions of Protective Overlay District #3 in 1996. The subject property was platted as Harrison Park Third Addition in 2000.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5" Church  
SOUTH: "SF-5" Single family residences  
EAST: "SF-5" Single family residences  
WEST: "TF-3" Single family residences

**PUBLIC SERVICES:** The subject property has access to Webb, a four-lane arterial street with current traffic volumes of approximately 19,000 vehicles per day. The 2030 Transportation Plan projects that traffic volumes will increase to approximately 22,000 vehicles per day and recommends that Webb remain a four-lane arterial street in this location. The proposed allowance of a "Vocational School" should not significantly change the traffic impacts from development of the site, and signalization improvements

and access controls guaranteed through the plat should address the commercial traffic generated by the subject property. All normal municipal services are available to the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: While the character of the surrounding area is predominantly residential, the subject property was approved for commercial zoning in 1996. The requested zone change and protective overlay amendment to permit a "Vocational School" should not significantly change the impact of the zoning approved for the property in 1996; therefore, the request is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "NR" Neighborhood Retail and could be developed uses permitted in that district; however, the "Vocational School" proposed for subject property is not significantly more intense than uses permitted in the "NR" district, as evidenced by the fact that a "Vocational School" may be permitted in the "GO" General Office district with approval of a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional zoning restrictions of Protective Overlay District #3 should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **DOWNING** seconded the motion, and it carried (10-0).

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9. **Case No.: ZON2004-67** – TPI Petroleum, Inc., c/o Douglas Miller Viet Le (contract purchaser) Request Zone change from "B" Multi-family Residential and "LC" Limited Commercial to "GC" General Commercial on property described as;

Lots 289, 290, 291, 292, 293, 294 and 295, except the North 10 feet of Lot 289 for street right-of-way, all on Hydraulic Avenue in Granville Park Addition to Wichita, Sedgwick County, Kansas. Generally located at the southwest corner of 13<sup>th</sup> Street North and Hydraulic.

**BACKGROUND:** The applicant requests a zone change from "LC" Limited Commercial and "B" Multi-family Residential to "GC" General Commercial on Lots 289 – 295, the Granville Park Addition. The subject properties are located on the southwest corner of Hydraulic Avenue and 13<sup>th</sup> Street North. The applicant proposes redevelopment of the property for used car sales and auto bodywork and painting. The "GC" zoning district allows outdoor vehicle and equipment sales and auto bodywork and painting.

The subject site currently has a vacant 1,000-square foot gas station building on it. The applicant proposes to build an additional 2,400-square foot building behind it for auto mechanical work, bodywork and painting. The applicant proposes to use the vacant building as office space for both of the proposed uses. The applicant has proposed to enclose the area where the paint and body works will be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts a Legion Hall and on its east and west sides where it is adjacent to residential zoning. The applicant has also proposed to close the entrances onto the site from Pennsylvania Avenue.

East of the subject site and across Hydraulic Avenue are a dentist office, zoned "LC", and single-family residences, zoned "LC" and "B". South of the subject site there is American Legion Post 273, zoned "LC", and single-family residences, zoned "B" and "SF-5" Single-family Residential. West of the subject site, across Pennsylvania Avenue, there is a vacant lot, zoned "LC", and single-family residences, zoned "SF-5". North of the subject site, across 13<sup>th</sup> Street North, there is a car sales lot, a warehouse, a bar and a neighborhood retail strip containing a self-service laundry, barber and beauty shops and some vacant space. All of these developments are zoned "LC".

**CASE HISTORY:** The Granville Park Addition was recorded with the Register of Deeds April 20, 1887. The site is in the McAdams Neighborhood Revitalization Plan, which was approved by the Wichita – Sedgwick County Metropolitan Area Planning Commission (MAPC) April 24, 2003 and adopted by the Sedgwick County Board of County Commissioners (BoCC, Resolution 114-03) May 14,

2003 and the Wichita City Council (WCC, Ordinance 45-726) June 3, 2003. The site is also in the McAdams Neighborhood Rezoning area (DR2004-04), which was recommended by the MAPC October 7, 2004 and approved by the WCC (Ordinance 46-405) November 19, 2004.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC" Limited Commercial	Local retail, warehouse, bar, car sales
SOUTH:	"LC" Limited Commercial	American Legion Hall
	"SF-5" Single-family Residential	Single-family residences
	"B" Multi-family Residential	
EAST:	"B" Multi-family Residential	Single-family residences
	"LC" Limited Commercial	Dentist office
WEST:	"LC" Limited Commercial	vacant property
	"SF-5" Single-family Residential	Single-family residences

**PUBLIC SERVICES:** The subject property has access to 13<sup>th</sup> Street North, a four-lane arterial with a center turn lane. Current traffic volumes are approximately 13,784 – 14,369 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on 13<sup>th</sup> Street North will increase to approximately 22,500 vehicles per day. This estimate of future traffic volumes on 13<sup>th</sup> Street was made prior to the Central Railroad Corridor Project, which will put the railroad tracks over 13<sup>th</sup> Street, eliminating traffic stoppages due to train traffic. The site also currently has access onto both Pennsylvania Avenue and Hydraulic Avenue, two-lane residential streets. Municipal water and sewer services and all other utilities are available to this site.

**CONFORMANCE TO PLANS/POLICIES:** The McAdams Neighborhood Revitalization Plan has stated that a lack of neighborhood serving retail commercial services is an economic development issue for this area and the 13<sup>th</sup> Street North corridor. The plan identifies the need for a grocery store, a restaurant, a pharmacy and a dry cleaner for the area. The plan has also designated the 13<sup>th</sup> Street North – Hydraulic intersection as a primary Neighborhood Entryway, with proposed landscaping and signage integrated into a designed entrance. The applicant's proposed uses of a car sales lot and an auto paint and body shop do not match the goals of the plan. The new zoning brought about by the McAdams Neighborhood Rezoning ordinance had as a stated principle that no property will be rezoned to a less restrictive zoning classification. The proposed rezoning of "LC" and "B" to "GC" does not conform to that principle.

The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. There are two other car sales lots in the area, one north of the site across 13<sup>th</sup> Street North and another approximately 1,000-feet west of the site, past IH-135, on 13<sup>th</sup> Street North and Cleveland Avenue. Both of these car sale lots were in place prior to the adoption of both the McAdams Neighborhood Revitalization Plan and the McAdams Neighborhood Rezoning and as previously stated, neither the proposed rezoning nor the proposed uses meet the goals or principles of those adopted ordinances.

**RECOMMENDATION:** In the past the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPD has also recommended that buildings that had in the past been used for automobile activities, such as gas stations, be considered as possible sites for car sales. The MAPC and the MAPD have also noted, in a past case, that certain corridors that serve as gateways or entrances into the community (Zoo Boulevard and West Street is an example) are not appropriate sites for car sales. The 13<sup>th</sup> Street North and Hydraulic Avenue intersection has been designated as a major entrance into the McAdams neighborhood. The implementation of the McAdams Rezoning ordinance and the McAdams Revitalization Plan do not indicate this site as appropriate for a less restrictive zoning (the requested "GC" zoning) to allow an auto paint and body shop or for a car sales lot. Based upon information available prior to the public hearing, planning staff recommends that the request be DENIED. Staff does recommend that the site's lot that is zoned "B" be rezoned "LC" to match the rest of the site's zoning.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of various local retail uses, an American Legion Post, office and two used car sales lots, all along the 13<sup>th</sup> Street North frontage. Single-family residential development is located behind these non-residential uses. All of the properties east of IH-135 along 13<sup>th</sup> Street North are zoned "LC" Limited Commercial. The two existing car sales lots were in place prior to the implementation of the McAdams Neighborhood Rezoning and the Revitalization Plan. One of the car sales lots, the one north across 13<sup>th</sup> Street North from the subject site, appears to be a less than robust business, which is not out of character with this section of 13<sup>th</sup> Street North. The proposed used car lot is not in conformance with the goals of the McAdams Neighborhood Revitalization Plan. There are no auto body and paint shops in the area and the proposed "GC" General Commercial zoning does not conform to the principles of the McAdams Neighborhood Rezoning.
2. The suitability of the subject property for the uses to which it has been restricted: The north six of the seven lots of the subject site are zoned "LC" Limited Commercial, with the most southern lot zoned "B" Multi-family Residential. The property is suitable for the commercial uses to which it has been restricted, which includes the neighborhood serving retail commercial services that the neighborhood has stated as needed for economic redevelopment of the area. The single "B" zoned lot is too small to be developed and should be rezoned "LC" to match the rest of the subject site's zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed uses of a car sales lot and an auto body works and paint shop do not match the goals of the McAdams Revitalization Plan, which has stated that

there is a need for the development of neighborhood serving retail commercial services in the area. Allowing another car sales lot into the area is not the type of development that the neighborhood has indicated it needs or wants. An auto body and paint shop is completely out of character with the area and does not match the neighborhood's needs or goals for economic redevelopment. If approved, both proposed uses could bring a similar type of development onto the vacant lot west of the site, which would seem to be at odds with the neighborhood's stated goals of attracting local retail development. A more appropriate location in the McAdams Neighborhood for both proposed uses would be south of 17<sup>th</sup> Street North between Mosley Avenue and Washington Boulevard, where there is an existing industrial corridor that has similar uses as those proposed.

4. Conformance of the requested change to adopted or recognized Plans/Policies: The proposed uses do not match the goals of the McAdams Neighborhood Revitalization Plan. The plan noted a need for local retail development, including the specific need for a grocery store, a restaurant, a pharmacy and a dry cleaner for the area. The proposed rezoning from "LC" and "B" to "GC" is contrary to the stated principle of the McAdams Neighborhood's rezoning that no property will be rezoned to a less restrictive zoning classification.
5. Impact of the proposed development on community facilities: The proposed uses of this property would have limited impact on community facilities.

If, however, the Planning Commission finds a car sales lot as an appropriate use for this site, staff recommends that the site's "B" Multi-family Residential zoned lot (Lot 295) be rezoned to "LC" Limited Commercial to match the rest of the site's "LC" zoning and a Conditional Use for vehicle sales outdoors be approved subject to the following conditions and:

1. All requirements of Article III, Section III.D.6.x. of the Unified Zoning Code (UZO) shall be met. Any variance from Article III, Section III-D, 6.x of the UZO would require a waiver approved by the Wichita City Council.
2. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks. No sale or rental of trailers, vehicles or trucks larger than pick ups. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business.
3. The applicant shall dedicate by separate instrument an additional 10-feet of street right-of-way along the property's 13<sup>th</sup> Street North frontage within six months of final approval of the Conditional Use.
4. The applicant shall dedicate by separate instrument complete access control along the site's Hydraulic Avenue and Pennsylvania Avenue frontages. Where existing access is currently located on these frontages, the applicant shall guarantee the continuation of the curb, per City Standards.
5. No elevated display areas.
6. Parking spaces for employees and customers shall be provided on the property as required by the UZO and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless an employee drives the vehicle. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. A landscape plan, per the Landscape Ordinance, shall be submitted, including landscaped street yards and a landscape buffer along the south side of the site and the east and west sides where the site is adjacent to residential zoning, which shall be provided and maintained on the property as approved by the Planning Director.
9. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within six months of approval of the Conditional Use by the MAPC or governing body, as applicable. The site plan shall include a 6-foot wooden, stockade type fence located on the south side of the site and along the eastern and western portions of the site where it is adjacent to residential zoning, all lighting, including those on the building, the location and size of the office and garage space within the current building and any additional buildings, approved signage and solid screening around the trash receptacle,
10. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

BARFIELD What is the zoning on the car sales lot directly to the north?

LONGNECKER It is zoned Limited Commercial.

BARFIELD He can operate a car sales lot with the current zoning?

LONGNECKER I could not find a Conditional Use on this. I did note that both the car sales lots that are in this immediate area were in place and practicing prior to the neighborhood rezoning, and also the McAdams Revitalization Plan, so these uses were already in place. Now for "LC" Limited Commercial you would have to have a Conditional Use for a car sales lot.

BARFIELD Was this specific property rezoned by McAdams Neighborhood rezoning?

LONGNECKER No, this zoning remained the same as it was.

BARFIELD The auto paint, and body shop, would that require a different zoning then a car sales lot?

LONGNECKER That would require "GC" General Commercial zoning, and staff felt like that was inappropriate for this in regards to the principals stated in the neighborhood rezoning.

DUNLAP What is the south boundary of the McAdams Neighborhood?

LONGNECKER The south boundary is Central.

JOHNSON What if this was an auto repair shop, what zoning would that require?

LONGNECKER As long as they are not doing paint and body work that can go in "LC" Limited Commercial zoning.

JOHNSON The lot across the street was probably a grandfathered situation, now the lot that is west of this on the other side of I-35, that is not too old.

DUNLAP We approved that fairly recently.

JOHNSON Was that an overlay?

LONGNECKER That was in place prior to the rezoning and it has a Conditional Use on it.

BISHOP Was there a DAB meeting on this or is there one scheduled for this?

LONGNECKER No, there was not a DAB meeting scheduled. This case would go to City Council because there is rezoning involved in this. I have received some calls from the neighbors, two so far, and I have met with them.

SHERMAN What were their concerns?

LONGNECKER The concerns were about the auto body and paint shop, there was some concern about the fact that there are limited opportunities for redevelopment for this corridor and they would like to see what was listed in the McAdams Plan for redevelopment.

TIM AUSTIN, Poe and Associates We have a lot of difference of opinion with staff's comments and thoughts about the report. The McAdams Neighborhood Revitalization Plan does comment or speaks to a desire for neighborhood retail activities. But what is interesting is that Plan was adopted in May 2003, but prior to May 2003 there was a McAdams Neighborhood Economic Development profile study that was done by WSU and that was done in 2001. One of the things that was interesting is part of this study document says, "That there is no magic wand to fix neighborhoods like McAdams. As much as we would like to fix the problems that exist there is little we can do in the absence of private investments and at the current state of McAdams Neighborhood virtually guarantees that outside entrepreneurs and retail chains will be willing to invest there". That kind of summarizes what the study found that WSU did that retail opportunities just don't exist in the McAdams Neighborhood. When you consider that and couple that with the fact that there is a effort to develop the 21<sup>st</sup> Street Corridor and concentrate a lot of the growth and public investment and incentives in the 21<sup>st</sup> Street Corridor we don't feel the 13<sup>th</sup> Street or McAdams Neighborhood is going to be attractive to retail.

One of the reasons why retail is not very desirable in that neighborhood is because the medium income is almost half of what it is City wide, which would be about \$24,000. When you look at the study and the spending patterns the top items for which the households in McAdams neighborhood what their expenditures are on are those that are related to their vehicles. Because of that we believe the service that would be provided for an auto repair, and auto body would be a business that would be serving that community. There are no other businesses in that area that could provide that service.

Attached to the staff report is a proposed Protective Overlay, that after consulting with our client that we were agreeable to do which was the "GO" General Office zoning and limiting the uses to those allowed by right in "LC" Limited Commercial and the two uses that would require your approval and the one that would require the "GC" General Commercial the vehicle and equipment sales, outdoor, and vehicle repair, general.

Staff's comments about the neighborhood entry way, I don't know on one of these slides, this intersection was reconstructed a couple of years ago by KDOT under local projects funding and as you can see there was some extensive landscaping that has already been done. I had included with our application and unfortunately it did not make it into your packet was a site plan to show how the site could be developed nicely. One other thing about the site plan and staff's comment they made reference to it, the part that would be "GO" General Office use would be for the auto repair would be behind the existing convenience store building structure and that would be fenced in entirely with a screening fence and with a landscape buffer. So the typically things that people perceive that as a detriment to the neighborhood as far as the visual sites and sounds those would be medicated by that.



One of the things that the Neighborhood Revitalization Plan also talks about one of the goals out the Plan in 2003 is to promote the develop expansion of neighborhoods serving commercial development in the area. It does not necessarily limit it to retail it does say commercial development. What is interesting in recognition of the study that was done prior to the adoption to the Plan it talks about providing public incentives for businesses to start up along the 13<sup>th</sup> Street Corridor and what we have is an investor here who is willing buyer and willing seller, and we don't need any public subsidies to do this project and again we think that it is one that will serve the neighborhood.

One thing that I had an issue with in the McAdams Neighborhood Rezoning Ordinance, it stated as a principal that no property will be rezoned to a less restrictive zoning classification. That is a Plan, and notice of that Plan and adoption of the Plan, that was not sent to every property owner in that boundary area. We believe that rezoning this property from "LC" to "GC" is in fact changing its land use to its highest and best use. If you were to deny that it could be considered a taking of the property to deny the property owner its highest and best use.

Staff's comments recognize that this is a depressed area. From an economic standpoint there are vacancies, and especially the car lot across the street is not very well kept up or maintained. This is a nice facility, and it will be kept up and maintained, and will be developed in accordance with the landscape standards that we have today. We take issue with the staff comments that the property is suitable for the commercial uses to which it has been restricted. This property has been vacant for over two years, and this is the second contract on it the other one was also for car sales, as I understand it. I don't think it is suitable in light of the study that was done by WSU 2001 that talks about retail not looking to this area or this area not being desirable for retail uses and we would disagree with staff.

When you are in business it is location, location, location, and you want to put yourself in a position to succeed. The traffic count, as staff noted, is over 14,000 vehicles per day at this location. The location that was referred to the traffic counts are half that, and it is also further away from an area where it could be better serving its customer base. Again I would like to note that retail will go to 21<sup>st</sup> Street in our opinion given the significant public investment that is being proposed up there.

We offered what we thought was a very fair compromise position in terms of the "GC" zoning with a Protective Overlay. We would take issue with staff's suggestion on "LC" zoning and a Conditional Use for vehicle sales, specifically Item 3 and Item 4. Item 3 talks about additional dedication of 10-foot street right-of-way. That 13<sup>th</sup> Street and Hydraulic intersection was just reconstructed two years ago. We did the plans on it, and we donated right-of-way at that time, so we do not feel that there is any need for additional right-of-way. Access control on Hydraulic and Pennsylvania, the site plan that we proposed was to keep two of the existing drives, one on Hydraulic and one on Pennsylvania for access into the site, and we would like to maintain those.

As to whether this use would be a detriment to the neighborhood, I think that we need to recognize that the American Legion to the south is a Class A nightclub. I don't think that the use that we are proposing in terms of car sales and a body shop will hurt the neighborhood. We have tried to design the site with lighting, noise, the visual and the landscape buffer and we have someone that is willing to invest their money into an area that is already recognized as being economically depressed. I think we should be encouraging development.

BARFIELD I agree with some of what you say; you say that the current building is going to be retained, what for?

AUSTIN It will be retained for the car sales office, and the business office for both the car sales and for the vehicle shop behind the building.

BARFIELD You have listed on the application, sales and vehicle repair. Is that a body shop?

AUSTIN It is both. The zoning category is vehicle equipment repair, and it doesn't make any distinction between things like mechanical repair and bodywork. They both fall under the same zoning category.

BARFIELD You indicated that the building was going to be constructed for a body shop and paint.

AUSTIN Yes.

BARFIELD Would that be the same building that would be used for auto repair?

AUSTIN Yes.

BARFIELD What percentage of the business is intended to be auto sales, and what part is auto body paint?

AUSTIN I don't know that we have an answer to that.

BARFIELD You also indicated that the building to be constructed would be screened by a fence. The entire facility at this time is screened by a fence. Are you indicating that fence will be removed?

AUSTIN The facility right now is screened by a chain link fence; that chain link fence would be replaced from basically the rear of the convenience store, with a wood-screening fence, and then there would be a visible; see thru fence around the rest of the perimeter.

BARFIELD Would your client be agreeable if we approved the sales lot but not the body repair?

AUSTIN No.

DUNLAP Is your client a contract purchaser?

AUSTIN He is the contract purchaser.

JOHNSON This body shop, repair shop, is its primary use to redo cars for his lot, or is it more for retail?

AUSTIN He would use it for both.

JOHNSON What would be the percentage; what he would fix himself and what he would have to look for outside help? What I am leading up to there is in this day and age some body shops that are pretty well kept up and cleaned; some of them are really good. If there is going to be a bunch of cars that he buys and brings in there and they sit around, I don't know.

AUSTIN The body shop would be built in this location behind the building. From this point around, it would be screened and any vehicles that would be worked on or stored outside would be screened. One of the zoning cases that we did previously at 6121 W. Central, next to the "Big Ditch," it is a similar operation but it doesn't have sales. We screened that and when you drive up and down west Central you never see the vehicles that are being repaired because it has been properly screened.

JOHNSON I don't want to build a building inside a full fenced in area where it don't look like a retail business and nobody knows what's there. If it is retail it needs to have a front door and something that is presentable. I agree the screening needs to be required for the storage vehicles that are getting ready to be repaired.

AUSTIN I think since it is under the same ownership, and this building and the current building is acting as the sales office, and the business office I think it avoids that concern that you have.

MILLER I have two comments. First, he indicated that possibly there was some sort of taking if you don't approve this "GC" request. There is no taking if you don't have it to start with. He doesn't have "GC" zoning so there is no taking if you deny it. The other thing is there is a specific provision in state law that allows you, with a publication in the newspaper, to rezone multiple properties without sending individual notices. That is how all of the Delano and Midtown down zonings have been handled, so there is no impropriety, to my knowledge, in terms of the way that the re-zoning may have occurred with the Midtown Plan. Also "vehicle repair, general" is only permitted in the "GC", "CBD", "GI", and the "LI" districts, and that is where a body shop is allowed. There is a "vehicle repair, limited," which is most other kinds of minor repair like you find at a typical gas station, and then "vehicle equipment and sales outdoors" is listed separately from those.

AUSTIN I think Dale was accurate in what he said, what I was thinking was the vehicle repair, the limited stuff is in "LC" but it is typically oil changes, oil lube and those kinds of lighter repair. When you start getting into transmission or heavier work it does fall in "GC". The one thing about the notification, I understand what the state law is but the property owner is an out of state corporation. It is what it is, and whether that is proper notice or due notice we can debate that all day. The property owner is an out of state corporation, and I doubt that they would read the Wichita Eagle to see what public notices affect them.

**MOTION:** To defer consideration of this case for 30 days to allow the District Advisory Board I to hear this request if they choose to do so.

**BISHOP** moved, **SHERMAN** seconded the motion.

BISHOP My reasoning is that when we pass a neighborhood plan we encourage all of the folks that work very hard on it to regard it as the real thing, and that it really exists, and it is not something just sitting on a shelf gathering dust. I think we owe the people in the McAdams neighborhood and District I a chance to see what is proposed.

**SUBSTITUTE MOTION:** To approve the "LC" zoning and change that little strip in the back from "B" Multi-family to "LC" Limited Commercial.

**BARFIELD** moved, **DOWNING** seconded.

DOWNING I realize that everything is not black and white, and that there are a lot of shades of gray, but it is my understanding that in these neighborhood revitalization plans we are attempting to reduce the zoning down to something that is less than what it was. In this case, we would be upgrading the zoning rather than down zoning. If we are going to approve and support these neighborhood plans then I think we ought to approve, and support them. If we were to increase the zoning here I don't think we would be sending that message. To my knowledge, this is the first one in the last several months. At least that this has been the case, and I just think this would be sending the wrong message to the other folks who are working on or have approved neighborhood revitalization plans.

DUNLAP I feel that you are probably correct in that the neighborhood plan was incorrect. I say that based on the fact that there is a strip center across the street, and a block east that is never full. So the idea of having neighborhood retail on this location is almost nil. There are other openings available on 13<sup>th</sup> Street and they change from time to time but nothing ever stays. This is a better use in my opinion than a vacant lot, and it isn't going to be used for a gas station again because we have a national company with a good planning department that could not make it there. This vacant lot and the building immediately south of it are the center of activities that are not conducive to neighborhood revitalization. I was concerned about the fencing because before this was fenced, and after it was closed there was a lot of trouble on that lot. I think that it is a suitable use because every retail operation that has tried there has not worked. I will not support either motion.

BARFIELD I do feel this site is suitable for an automobile sales lot. I don't feel that it is suitable for an auto paint, and body repair shop, because there is a very close proximity to residential right across the street to the west to where they are proposing to build the paint and body shop. You know that a paint and body shop will have a lot of noise, and I think that will not make it conducive to that neighborhood.

SHERMAN I am not necessarily opposed to either one of these businesses there. My concern is that the persons who work on the neighborhood revitalization plan where properly notified and understanding what is going on because they put the work in. I think they should have that opportunity to review this case.

BISHOP I am between a rock and a hard place because on one hand I agree with Commissioner Barfield that it would be better to follow the staff recommendation and bring the whole lot within conformance of the same zone classification, and I think that would make it more marketable for one thing. But on the other hand, I think the District Advisory Board should have the opportunity to review this. I am really amazed that there wasn't even anything scheduled for the DAB.

TIM AUSTIN I had raised that same question about not going to the DAB, and we would be agreeable to go to the DAB first and then come back to MAPC.

DUNLAP At this point we have a motion and a second to approve a zone change on the strip on the back from "B" Multi-family to "LC" Limited Commercial. Commissioner Barfield, if we were to defer this to you would you modify or change or withdraw your motion, so that it can go to the DAB?

BARFIELD I will just let it stand.

HENTZEN Which motion did Commissioner Barfield make?

DUNLAP He is the substitute motion, which changes the little strip on the back and that is all.

BARFIELD During this discussion two cases were pointed out; Commission Johnson pointed out a body shop in Derby and I know where he is speaking, and that is surrounded by commercial activity and not residential. The agent talked about a similar situation on West Street, and again that body shop is not in or near a residential area and that is why this is different the placing of that body shop will be within 200 feet of a residential area, and I can't support that.

JOHNSON That body shop in Derby has an "LC" zoning, and if you go out the back door it is all residential.

**SUBSTITUTE MOTION:** To approve the "LC" zoning and change that little strip in the back from "B" Multi-family to "LC" Limited Commercial.

**BARFIELD** moved, **DOWNING** seconded.

**SUBSTITUTE MOTION** fails 3-7. (**BARFIELD, DOWNING, JOHNSON** in favor)

**MOTION:** To defer consideration of this case for 30 days to allow the District Advisory Board I to hear this request if they choose to do so.

**BISHOP** moved, **SHERMAN** seconded the motion.

SCHLEGEL The next DAB I meeting will be February 7<sup>th</sup> so if they accept the item on their agenda then it can be heard by the DAB and be brought back here in 30 days.

BISHOP What I mean is to allow the DAB the opportunity to hear this case.

WARNER Commissioner Sherman mentioned the McAdams redevelopment group, is there a body that oversees questions like this? If so should they be included in the review of this case?

SCHLEGEL There was a neighborhood group we worked with on the McAdams Neighborhood Plan and on the rezoning, and they are still in place as we have been working with them on the rezoning, so yes.

BARFIELD The McAdams re-zoning group also provided an opportunity for property owners to opt out?

DUNLAP Correct.

**MOTION carried:** 9-1. (**DOWNING** opposed)

10. **Case No.: CON2004-44** – Joel Associates, Inc., c/o Len Marotte (owner/applicant); Poe and Associates c/o Tim Austin (agent) Request Conditional Use to permit an employee parking area for an off site commercial building on property zoned "SF-5" Single-family Residential on property described as;

Lots 11 and 13 on Power now Sedgwick Avenue, Maple Street Addition, Wichita, Sedgwick County, Kansas. Generally located at the northwest corner of Mentor and Sedgwick.

**BACKGROUND:** The applicant requests a Conditional Use to allow ancillary parking on 0.15 platted acres zoned "SF-5" Single Family. The subject property is a vacant lot located at the northwest corner of Mentor and Sedgwick. The applicant indicates that ancillary parking is needed for employee parking for an existing commercial building located at the southeast corner of Maple and Meridian.

The surrounding area is characterized primarily by residential uses; however, there are a couple of small commercial properties at the intersection of Maple and Meridian, including the applicant's property for which insufficient parking is available on site. The properties to the north, south, and east of the subject property are zoned "SF-5" Single Family and are developed with single-family residences. The property to the west of the subject property is zoned "B" Multi-Family and is developed with apartments. The applicant's commercial property is within the same block as the subject property, is zoned "LC" Limited Commercial, and is developed with a multi-tenant commercial building.

Ancillary parking areas may be permitted in residential zoning districts through approval of a Conditional Use. Ancillary parking areas are subject to the Supplementary Use Regulations contained in Section III-D.6.p. of the Unified Zoning Code (see attached). The subject property also is located within the Delano Overlay District; therefore, the proposed parking lot must conform to the Section 3.f.(2) of the Delano Neighborhood Design Guidelines (see attached).

The attached site plan illustrates a proposed 10-stall parking lot. Since the subject property is within the Delano Overlay District, Section II-C.8.c. of the Unified Zoning Code requires the site plan to be reviewed by the Delano Design Review Committee for conformance with the Delano Neighborhood Design Guidelines. The Delano Design Review Committee has conducted a preliminary review of the site plan and indicates that the following changes are needed for the proposed parking lot to conform with the Delano Neighborhood Design Guidelines.

1. In order to make the fences compatible with the architectural character of the area, the fence posts need to be brick columns matching the style found on porches of nearby homes.
2. In order to reduce the impact of noise and light from the parking lot on the residence to the north, the seven-foot strip along the north end of the subject property needs to be planted with evergreen trees.
3. In order to reduce the impact of noise and light from the parking lot on the residences to the south and east, the six-foot deep landscape bed along the south and east edges of the parking lot need to be planted with shrubs and ornamental trees.
4. In order to improve the visual appearance of the parking lot and make it more compatible with the residential neighborhood, two landscaped islands need to be provided in the interior of the parking lot.

**CASE HISTORY:** The subject property is platted as part of the Maple Street Addition, which was recorded March 8, 1887.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5"	Single family residence
SOUTH: "SF-5"	Single family residence
EAST: "SF-5"	Single family residence
WEST: "B"	Apartments

**PUBLIC SERVICES:** Normal municipal services are available. Transportation access is via Mentor, a paved residential street.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Residential" development. The Delano Neighborhood Plan is silent regarding the location of parking lots to support a commercial use within a residential area; however, an informal policy of supporting expansions of existing businesses at current locations rather than requiring relocation indicates the requested parking lot is supported by past policy.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends that the request be **APPROVED**, subject to the following conditions:

1. The ancillary parking area shall be developed and operated in conformance with the requirements of Section III-D.6.p. of the Unified Zoning Code, except as noted in the conditions of approval.
2. The posts of the six-foot high screening fence and three-foot high wrought iron fence shall be brick columns matching the architectural character of columns used on porches of nearby homes per an architectural rendering approved by the Delano Design Review Committee prior to the issuance of a building permit. The six-foot high screening fence shall be located on the north and west property lines entirely on the subject property and shall not extend beyond the south or east end of the paved surface of the parking lot. The three-foot high wrought iron fence shall be provided along the south and east edges of the parking lot except at driveway locations and shall tie into the screening fence at the corners of the parking lot.
3. A seven-foot deep landscaped buffer shall be provided along the north edge of the parking lot and shall be planted with evergreen trees spaced every 10 feet.
4. The six-foot deep landscape bed along the south and east edges of the parking lot shall be planted with shrubs every three feet (except at tree locations) and with ornamental trees every 20 feet. The remainder of the property between the landscape bed and the street shall be planted in turf grass and the existing trees in the right-of-way along Mentor and Sedgwick shall be maintained.
5. Two landscaped islands shall be provided in the interior of the parking lot. The landscaped islands shall each be planted with a shade tree and shrubs, ground cover, and/or turf grass.
6. The entrances to the parking lot shall be posted with signs not exceeding six square feet in area indicating that trespassing on the property is not permitted and that the parking lot is reserved for permitted parking only.

7. No lighting of the parking lot shall be permitted.
8. Prior to the issuance of a building permit but no later than 180 days after approval of the Conditional Use, a Zoning Adjustment to permit the parking area circulation aisle within the street side setback along Mentor shall be acquired.
9. A revised site plan addressing the conditions of approval shall be submitted for review and approval by the Delano Design Review Committee prior to the issuance of a building permit but no later than 180 days after approval of the Conditional Use.
10. All landscaping required by the conditions of approval shall be installed and maintained per a landscape plan approved by the Planning Director or his designee prior to the issuance of a building permit but no later than 180 days after approval of the Conditional Use. The landscape plan shall specify the plant materials and method of irrigation in conformance with the requirements of the Landscape Ordinance.
11. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by residential uses; however, there are a couple of small commercial properties at the intersection of Maple and Meridian, including the applicant's property for which insufficient parking is available on site. Ancillary parking areas may be permitted in residential zoning districts through approval of a Conditional Use. With the recommended conditions of approval, the proposed parking lot complies the requirements of the Unified Zoning Code and the Delano Neighborhood Design Guidelines; therefore, the ancillary parking lot is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single Family and could be developed with uses permitted in that district. An ancillary parking area may be permitted with approval of a Conditional Use and use of the subject property, as a parking lot is a suitable use of the property in that it furthers the continued viable use of a nearby commercial property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional zoning restrictions of the Conditional Use should limit noise, lighting, and other activity from adversely impacting surrounding residential uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Residential" development. The Delano Neighborhood Plan is silent regarding the location of parking lots to support a commercial use within a residential area; however, an informal policy of supporting expansions of existing businesses at current locations rather than requiring relocation indicates the requested parking lot is supported by past policy.

DALE MILLER Planning staff Since this report was mailed the applicant has indicated they want Condition #5 deleted and staff is comfortable in deleting that condition.

GIBBS Has this been approved by the Delano Review Committee?

MILLER The Plan was reviewed by the Committee.

GIBBS But not approved?

MILLER Yes, they met and made recommendations, and the applicant has worked to comply with those recommendations.

TIM AUSTIN, POE AND ASSOCIATES The building for which this parking lot is going to serve is 7,200 square feet, and they currently have 18 parking stalls. The normal Zoning Code requirement is 29. With this parking lot we will pick up 10 stalls, so it will be very close to being in compliance with the Code, and that is why we are here today.

DOWNING Is there anyway except going all the way around to get from the parking lot to the business location? There is no shortcut across the alley?

AUSTIN There is no platted alley. You can have pedestrian access through the apartment complex to the west through their parking lot, but there is no public access per say.

DOWNING So they will have to go around the block to get there?

AUSTIN That is correct.

JUDITH FIELDS, 8027 Lulu, Haysville, KS My husband and I are co-owners of the house to the north of this lot. It is to be my house. If something happens to my husband, this is where I am going to live. We have not been able to talk to any of the neighbors because of the ice storm, and my husband had major surgery. I have lived next door to parking lots in the past, when I lived over on Martinson, and I know the activities that go on in those parking lots at night when the business is not open. The cars, the gathering of people, the kids, the hot rods, and there is a good chance that this will happen here. This is a concern to my husband and I. I

have read the planning staff report about how they will do landscaping and sound barriers, and that kind of thing, but by putting cedar trees up that will block a lot of view. I am aware that eventually they are going to put a house there. That is what it is zoned for is a single house dwelling in the first place and not a parking lot. There is parking lot in the apartments that are to the west of that lot. There is parking there. My concern mainly is that this will turn out to be a nightmare with potential dangerous activity going on here. I plan on protesting this request.

DUNLAP Dale notices went to the neighbors?

MILLER Yes, we sent the standard 200-foot notice.

FIELDS They had a DAB meeting, and it was cancelled because of the storm.

MILLER That DAB meeting was rescheduled for January 19<sup>th</sup>.

**MOTION:** To approve subject to staff recommendation, with the change of deleting Condition #5.

**BARFIELD** moved, **HERNANDEZ** seconded the motion.

**CARRIED** 10-0.

11. **Case No.: CON2004-43** – Terry and Diane Gillette (owner/applicant) Request Conditional Use for vehicle sales on property zoned “LC” Limited Commercial on property described as;

The south 17 feet 2 inches of Lot 271 and all of Lots 273, 275, 277 and 279, except the east 10 feet for Meridian Avenue together with Lot 281 except the west 31 feet of the south 5 feet thereof and except the east 10 feet for Meridian Avenue together with Lot 283 except the south 5 feet thereof and except the east 10 feet for Meridian Avenue, Richmond's Second Addition to Wichita, Sedgwick County, Kansas. Generally located North of Harry and west of Meridian.

**BACKGROUND:** The applicant requests a Conditional Use to permit vehicle sales on a .72-acre “LC” zoned property, located North of West Harry and West of South Meridian. The applicant currently owns and operates a vehicle service/maintenance garage on the site. The subject property is zoned “LC” Limited Commercial, requiring a Conditional Use for vehicle sales when conducted outdoors. The applicant submitted the attached site plan illustrating the proposed use of the subject property as a vehicle sales lot.

The surrounding area is characterized by commercial zoning and uses at all four corners of the Meridian and Harry intersection. Surrounding commercial uses include retail and strip commercial, auto sales and services, and a tavern. Residential zoning and uses surround the application area on the local residential streets. Residential zoning in the area is primarily “TF-3”, but is developed predominantly with single-family residences. “TF-3” zoning and single-family residential uses are across an alley, immediately west of the application area.

**CASE HISTORY:** The subject property is platted as the Richmond's 2<sup>nd</sup> Addition in 1986. The primary building on the site was built in 1953.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“LC”	Retail
SOUTH:	“LC”	Auto sales
EAST:	“LC”	Multi and single-family residences
WEST:	“TF-3”	Single-family residences

**PUBLIC SERVICES:** The subject property has access to both Harry and Meridian. Meridian is a four-lane arterial with an 80-foot right-of-way at this location and a daily traffic count of 14,557. Harry is a two-lane arterial with a 60-foot right of way at this location and a daily traffic count of 5,166. The 2030 *Transportation Plan* does not recommend changes for either of these roads, nor does the CIP propose any projects at this location. Municipal water and sewer is available to serve the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for “Commercial” development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The Commercial Locational Guidelines of the Comprehensive Plan also recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas.

The Unified Zoning Code gives specific requirements for outdoor vehicle sales in “LC”; Section III-D.6.x. of the UZC is attached.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The subject property shall comply with the requirements of Section III-D.6.x. of the Unified Zoning Code.
2. The subject property shall be developed in general conformance with the approved site plan.

3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial zoning and uses along the Meridian corridor, including existing outdoor vehicle sales. While outdoor vehicle sales is not in character with the "TF-3" zoned single-family residences west of the application area (across the alley); the provisions of the Unified Zoning Code Section III-D.6.x. requires screening, and mitigates potential negative impacts on nearby residences.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and is currently used for vehicles services. The property could continue to be used without the Conditional Use for vehicle sales.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Existing buildings on the application area screen the proposed outdoor sales area from residences west of the site, across the alley.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Locational Guidelines. The Commercial Locational Guidelines of the Comprehensive Plan also recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **DOWNING** seconded the motion, and it carried (10-0).

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❖ **PLANNING COMMISSION ITEMS**

1. **Due Process, Conflicts, Prejudgment, Ex Parte, and Quorum/Voting Considerations, presentation by Robert Parnacott, Assistant Sedgwick County Counselor, and Joe Lang, First Assistant City Attorney.**



MAPC WORKSHOP

Due Process, Conflicts, Prejudgment,  
Ex Parte, and Quorum / Voting Considerations  
January 13, 2005

Sources of Rules

- Constitution
- Common law
- Statutes
- Commission by-laws
  - Note: Failure to follow by-laws can result in reversal of decision
- Kansas appellate court decisions
- Advisory opinions - State Ethics Commission

Issues

- Due process
- Conflicts of Interest
- Prejudgment
- Ex parte contacts
- Quorum / Voting

Constitution

- Due Process Requirements
  - Zoning Cases are Quasi-judicial proceedings
- Must be fair, open, and impartial
  - Notice, and opportunity to be heard at a meaningful time and in a meaningful manner
- Full rights of due process do not apply
  - Cross-examination of witnesses not required

Common Law – Conflicts of Interest

- Anderson v. City of Parsons
  - A public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interests of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence.

Statutes - Conflicts of Interest

KSA 75-4301a – Governmental ethics act applicable to local government subdivisions

- Key definitions
  - Substantial interest
  - Local governmental officer
  - Governmental subdivision
  - Contracts
  - Acts
  - Compensation

Statutes - Conflicts of Interest

- Substantial interest
  - 1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.
  - 2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.
  - 3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.
  - 4) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10)

or (19) of chapter 26 of the United States code, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

- 5) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

Statutes - Conflicts of Interest

- "Local governmental officer" means any elected or appointed officer of any governmental subdivision or any of its agencies.
- "Governmental subdivision" means any city, county, township, school district, drainage district or other governmental subdivision of the state having authority to receive or hold public moneys or funds.
- "Contracts" means agreements including but not limited to sales and conveyances of real and personal property and agreements for the performance of services.
- "Acts" means the exercise of power or authority or performance of any duty incident to public office or employment.
- "Compensation" means any money, thing of value or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by that person or another, but shall not mean nor include reimbursement of reasonable expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.

Statutes - Conflicts of Interest

- KSA 75-4305:
  - (a) Any local governmental officer or employee who has not filed a disclosure of substantial interests shall, before acting upon any matter which will affect any business in which the officer or employee has a substantial interest, file a written report of the nature of the interest with the county election officer of the county in which is located all or the largest geographical part of the officer's or employee's governmental subdivision.
  - (b) A local governmental officer or employee does not pass or act upon any matter if the officer or employee abstains from any action in regard to the matter.

By-laws - Conflicts of Interest

- MAPC By-laws
  - A member shall not participate or vote on an issue before the Commission if:
    - the member has a substantial interest on a particular issue as defined by state law;
    - the member owns property or is a prospective purchaser of property included in any application, or
    - the member owns property in the statutory notification area.
  - Members shall not make presentations to either governing body on a quasi-judicial item prior to the resolution of that item by the governing body, unless the member has abstained from participation on that item or the member has been designated by the Commission to make a presentation.
  - Members shall not assist or represent applicants on zoning, subdivision, or vacation applications in the presence of the Commission. Members may appear and speak before the Commission where the member owns property or is a prospective purchaser of property included in an application or the member owns property in the statutory notification area of an application.

Caselaw - Conflicts of Interest

- Dowling v. City of Shawnee
  - Facts
    - Application by LLC for rezoning
    - T member of planning commission
    - T also 55% owner of LLC
    - T listed on application as "contact person"
    - At planning commission meeting, T remained in his seat while staff presented item and opponent spoke
    - T then stepped down and spoke in favor of case
    - T disclosed his ownership in the LLC to the commission
    - T never left room – but did not vote on case
    - T did not file a substantial interests disclosure
    - T also spoke at city council meeting in favor of case

Caselaw - Conflicts of Interest

- Court ruling
  - T had substantial interest in LLC applicant
  - Advocating the approval of a project in which a planning commissioner has a substantial interest, without identifying the commissioner's interest, violates KSA 75-4305
  - T did not abstain from any action in regard to the zoning application

Advisory Opinions - Conflicts of Interest

- Advisory Opinion – State Ethics Commission Op. No. 95-10

- If government officer has substantial interest:
- 1) Can file a statement reporting the interest; or
- 2) Totally abstain from any action as a planning commissioner
- Advisory Opinion – State Ethics Commission Op. No. 99-22
- The statement of interest must be filed before any action takes place on the matter

By-laws - Prejudgment

- Commission By-laws
- A member shall not participate or vote on an issue before the Commission if:
- the member has expressed an individual opinion on the determination of a quasi-judicial matter or otherwise expressed himself or herself in a way that infers an opinion has been formed prior to the Commission's hearing on the matter

Caselaw - Prejudgment

- McPherson Landfill v. Shawnee County
- Facts
- Co. Comm'r # 1 sent a letter prior to the hearing to the applicant noting that the comm'r had received opponent's phone calls; and that the commissioner wanted to gather information on the case before the BoCC hearing
- Letter concluded with a statement that "it is in the best interests of the community to find more suitable locations where access will not be an issue."

Caselaw - Prejudgment

- McPherson Landfill v. Shawnee County
- Facts
- Co. Comm'r # 2 met with the applicant before the BoCC hearing and told them he was not in favor of the application
- He, however, also indicated he would reserve his final decision after all the evidence was received

— Court ruling

- Evidence did not show prejudgment by either commissioner

Caselaw - Prejudgment

- Tri-County Concerned Citizens v. Harper County
- Facts
- Co. Comm'r # 1 participated in early discussions about feasibility of local landfill and how it could help address county financial needs
- However, he testified he did not make up his mind until the hearing
- Co. Comm'r # 2 at time of vote expressed an opinion that if all conditions required were agreed to by the applicant, he had no choice but to vote in favor of the application
- However, he testified that his intent was to follow the law and give each side equal consideration

Caselaw - Prejudgment

- Court ruling
- Comm'r # 1's actions were consistent with his responsibilities as a county commissioner
- Comm'r # 1's actions also predated filing of the case so quasi-judicial requirements had not attached yet
- Comm'r # 2's actions did not rise to the level of prejudgment

Caselaw - Prejudgment

- Legal principles
- Prejudgment statements must support finding that the decisionmaker has an open mind and will continue to listen to all the evidence before making a decision
- The statements cannot show an irrevocably closed mind
- Familiarity with the facts of the case, even to the point of reaching a tentative conclusion, does not disqualify the decisionmaker
- Mere evidence that the decisionmaker has a particular political view or general opinion does not by itself show prejudgment
- Actions or statements occurring during the pre-application stage, e.g. to explore feasibility and potential economic benefits, do not show prejudgment
- Self-serving testimony that a decisionmaker kept an open mind can be overcome by contrary statements or actions

By-laws - Ex parte Contacts

- By-laws
- Prior to any motion on an application, Commissioners shall disclose the nature of any ex parte contacts and of any information obtained through those contacts that may have a bearing on their decisions.

Caselaw - Ex parte Contacts

- McPherson Landfill v. Shawnee County
  - Court's ruling
- Parties must be informed of the evidence submitted for consideration and be allowed an opportunity to respond to or rebut the evidence
- Making the evidence obtained through prehearing ex parte contacts part of the record meets the due process requirements for a fair hearing

Bylaws - Quorum / Voting

- Commission bylaws
  - A quorum of the Commission shall be required to conduct official business.
  - A quorum shall consist of a majority of the members of the Commission appointed and qualified at any given time.
  - The affirmative vote of a majority of those members present and voting shall be sufficient for the passage of all motions; except that the adoption of or amendments to the Comprehensive Plan, the Unified Zoning Code text, and the Subdivision Regulations shall require a majority of all members.
  - In the absence of a quorum at any meeting, the presiding officer may adjourn the meeting to a specific time, date and place, which shall be publicly announced.

Bylaws - Quorum / Voting

- Commission, as part of its bylaws, has adopted Robert's Rules of Order, Revised (1970 ed.)
  - In absence of quorum, other legal actions are:

- Recess
- Take measures to achieve quorum

By-laws - Quorum / Voting

- Commission bylaws
  - Any member remaining silent on a vote shall be considered to have voted in the affirmative.
  - The Chair shall grant permission upon request for any member to refrain from participating in the discussion and voting on an item when said member advises the Chair of matters arising under the provisions of Section 10.b pertaining to that item. [See Slide #10]
  - Such member shall be recorded as abstaining on the vote but shall be counted for the purposes of determining a quorum.

Caselaw - Quorum

- Anderson v. City of Parsons
    - Where the required majority exists without the vote of the disqualified member, his or her presence will not invalidate the result.
    - A majority vote need not be invalidated where the interest of the disqualified member is general or a minor character.
-

The Metropolitan Area Planning Department informally adjourned at 4:25 p.m.

State of Kansas     )  
Sedgwick County    ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)